Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased; WILLIAM HAROLD MARTIN,

Petitioners

v.

JOSEPH L. LABELLE; CHARLES E. BUSH; JOHN P. PARKER

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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66 pp

Introductory Statement

The subject matters of this three-case (Civil No. 98CV10194, Civil No. 98CV10228, Civil No. 98CV10229) PETITION FOR WRIT OF CERTIORARI constitutionally, and profoundly, concern this Court's landmark "use of deadly force" decision in Tennessee v Garner, 471 U.S. 1 (1985) wherein Mr. Justice White said at 11: "The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable ..."

Questions Presented For Review

1. In Civil No. 98CV10194, did the Sixth Circuit per curiam Court's 3/27/01 decision (Appendix A, 1a - 6a) seriously err so as not only to constitute a departure seriously far from the accepted and usual course of appellate proceedings, but also so as to constitute an affirmative appellate sanction of the district court's departure seriously far from the accepted, usual and mandated course of district court "summary judgment" proceedings — so as, altogether, to call for the exercise of this Court's supervisory power?

2. In Civil No. 98CV10228, did the Sixth Circuit per curiam Court's 3/27/01 decision (Appendix A, 1a-6a) seriously err so as not only to constitute a departure seriously far from the accepted and usual course of appellate proceedings, but also so as to constitute an affirmative appellate sanction of the district court's departure seriously far from the accepted, usual and mandated course of district court "summary judgment" proceedings — so as, altogether, to call for the exercise of this Court's supervisory power?

3. In Civil No. 98CV10229, did the Sixth Circuit per curiam Court's 3/27/01 decision (Appendix A, 1a-6a) seriously err so as not only to constitute a departure seriously far from the accepted and usual course of appellate proceedings, but also to constitute an affirmative appellate sanction of the district court's departure seriously far from the accepted, usual and mandated course of district court "summary judgement" and "dismissal" proceedings — so as, altogether, to call for the exercise of this Court's supervisory power?

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Parties

In Civil No. 98CV10194 and in Civil No. 98CV10228, the parties are the petitioner Constance Ann Martin, Personal Representative of the Estate of Kirk William Martin, Deceased, and the respondent Joseph L. LaBelle; and in Civil No. 98CV10229, the parties are the petitioners Constance Ann Martin and William Harold Martin and the respondents Joseph L. LaBelle, Charles E. Bush and John P. Parker.

Citations

In Civil No. 98CV10194, Civil No. 98CV10228 and Civil No. 98CV10229, the only official reports are the Sixth Circuit per curiam Court's 3/27/01 decision (Appendix A, 1a - 9a), the 5/16/01 mandate (Appendix J, 82a - 83a), and the district court's 2/03/00 Order Adopting Magistrate Judge Charles E. Binder's December 23, 1999 Report And Recommendation (Appendix B, 7a - 10a).

Concise Statement Of The Basis For Jurisdiction In This Court

The Sixth Circuit per curiam Court's three-case decision (Appendix A, 1a - 69a) was filed on 3/27/01 and was mandated on 5/16/01 (Appendix J, 52a).

Constitutional Provisions And Statutes Involved In The Case

U.S. Const, Am IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Due Process Clause of U.S. Const, Am XIV, concerning the "shocks the conscience" - substantive due process right concerning homicidal deadly force action and conduct which "offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offense" as guaranteed by the Due Process Clause of the Fourteenth Amendment, and as authoritatively described in Wilson v Beebe, 772 F2d 578, 6 (CA , 1985), at 586: "In Tennessee v Garner, ___ U.S. ___, 105 S.Ct. 1694, 1699, 85 L.Ed.2d (1985), the Supreme Court wrote, "there can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." If there is an unreasonable seizure, it violates the Fourth Amendment which is made applicable to the states by the due process clause of the Fourteenth Amendment. As such, it is a substantive due process violation. It is clear, however, that Wilson did not base his due process claim on the reasonableness of his arrest. The seizure was complete when Wilson submitted to arrest, and his complaint only charged a violation of his due process rights after the arrest occurred. The complaint spoke of the duty owed those "under arrest, apprehension or in custody." This case was not pleaded or tried as one for the violation of the Fourth Amendment right to be free of unreasonable seizures or any other substantive right specified in the Constitution. ... There remains the duty to inquire whether Wilson proved a case which fits the other prong of substantive due process - official acts which "may not take place no matter what procedural protections accompany them." Hudson v. Palmer, 104 S.Ct. at 3208, n. 4. (Separate opinion of Stevens, J.). This description is a refinement of Justice Frankfurter's "shocks the conscience" test in Rochin v. California. Neither formulation requires a claim that some specific guarantee of the Constitution apart from the due process clause be violated. Thus, both Rochin and the opinion of four Justices in Hudson v. Palmer support Judge Friendly's

assertion in Johnson v Glick that there is a species of substantive due process, apart from any "specific" of the Bill of Rights which is violated when law enforcement officers apply undue force in dealing with suspects. This is a substantive due process right akin to the "fundamental fairness" concept of procedural due process."

42 U.S.C. § 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. ..."

Michigan Compiled Laws 600.2922. **Wrongful death** Sec. 2922: **"Liability of tort-feasors; exclusiveness of remedy.** Whenever the death of a person or injuries resulting in death shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances that constitute a felony."

Michigan Compiled Laws 6-600.2922.(6): **Damages; distribution**: "In every action the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable, reasonable compensation for the pain and suffering, while conscious, undergone by the deceased person during the period

intervening between the time of injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased. ..."

Concise Statement Of The Three Cases Setting Out The Facts Material To Consideration Of The Three Questions Involved

I

In Civil No. 98CV10194, all of the facts material to the consideration of Question For Review 1 are set out, which is to say pleaded, in the petitioner's (Constance Ann Martin, Personal Representative of the Estate of Kirk William Martin, Deceased) jury-demanded four-count Amended Complaint (Appendix C, 11a - 17a).

II

In Civil No. 98CV10228, all of the facts material to the consideration of Question For Review 2 are set out, which is to say pleaded, in the petitioner's (Constance Ann Martin, Personal Representative of the Estate of Kirk William Martin, Deceased) Complaint For Declaratory Relief (Appendix D, 18a - 22a).

III

In Civil No. 98CV10229, all of the facts material to the consideration of Question For Review 3 are set out, which is to say pleaded, in petitioners' (Constance Ann Martin and William Harold Martin) jury-demanded two-count 42 USC § 1983/ Restatement, Second. Torts § 46 (1) Complaint (Appendix E, 23a - 30a).

Reasons For Granting The Three Case Petitions

Civil No. 98CV10194

A summary judgment is properly granted only where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Summary judgment is a lethal weapon, and courts must be mindful of its aims and targets and beware of overkill in its use. Brunswick Corporation v Vineberg, 370 F2d 605, 608, 612 (CA 5, 1959).

Gregg v Allen-Bradley Co., 801 F2d 859 (CA6, 1986), at 861: "Summary judgment is an appropriate means of disposing of a case where there is no genuine issue as to material fact. Fed.R.Civ.P.56(c). The burden is on the moving party to show conclusively that no genuine issue of material fact exists. Smith v Hudson, 600 F.2d 60, 63 (6th Cir.) cert. denied, 444 U.S. 986, 100 S.Ct. 495,62 L.Ed. 2d 415 (1979). The district court must view the evidence with all inferences drawn therefrom read in the light most favorable to the party opposing the motion. Id."

Employers Insurance of Wassau v Petroleum Speciaities Inc., 69 F3d 98 (CA 6, 1995), at 101: "This court reviews de novo the district court's grant of Appelliees' motion for summary judgment, Boggs, v Eagle-Pitcher Indus. Inc., 957 F2d 268, 271 (6th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 466, 121 L.Ed. 2d 374 (1992). This court must affirm the district court only if it determines that the pleadings, affidavits, and other admissions show 'there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.' Fed.R.Civ.P.56(c). ..."

In Civil No. 98CV10194, as plainly shown on the face of the petitioner's (Constance Ann Martin, Personal Representative of the Estate of Kirk William, Deceased) jury-demanded four-count Amended Complaint (Appendix C, 11a - 17a), and

as plainly shown on the face of respondent's (Joseph L. LaBelle) Defendant LaBelle's Answer To Amended Complaint (Appendix F, 31a - 35a) there exist numerous genuine issues of material fact for district court jury determination - and not for Sixth Circuit per curiam Court determination.

Civil No. 98CV10228

In Civil No. 98CV10228, as plainly shown on the face of the petitioner's (Constance Ann Martin, Personal Representative of the Estate of Kirk William, Deceased) Complaint For Declaratory Relief (Appendix D, 18a - 226a), and as plainly shown on the face of the respondent's (Joseph L. LaBelle) Defendant's Answer To Plaintiff's Complaint (Appendix G, 36a - 39a), there exist numerous genuine issues of material fact for district court determination - and not for Sixth Circuit per curiam Court determination.

Civil No. 98CV10229

In Civil No. 98CV10229, as plainly shown on the face of the petitioners' (Constance Ann Martin and William Harold Martin), jury-demanded two-count 42 USC § 1983/Restatement, Second, Torts § 46(1) Complaint (Appendix E, 23a - 30a), and as plainly shown on the face of respondent's (Joseph L. LaBelle) Defendant's Answer To Plaintiff's Complaint (Appendix H, 40a - 45a), there exist numerous genuine issues of material fact for district court jury determination - and not for Sixth Circuit per curiam Court determination.

Rule 1, in material and mandatory part, provides: "These rules govern the procedure in the United States district courts in all suits of a civil nature... They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

Rule 8(f) is entirely mandatory: "All pleadings shall be con-

strued as to be substantial justice."

Conley v Gibson, 355 U.S. 41 (1957), at 45 - 46: "... In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. ..."

Jenkins v McKeithen, 395 U.S. 411 (1969), at 421: "For purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted. ... And, the complaint is to be liberally construed in favor of the plaintiff. See, Fed.R.Civ.Proc. 8(f). ..."

Scheuer v Rhodes, 416 U.S. 232 (1974), at 236: "When a federal court reviews the sufficiency of a complaint, before reception of any evidence ... its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, ... the allegations of the complaint should be construed favorably to the pleader."

In Civil No. 98CV10229, as plainly shown on the face of the petitioners' (Constance Ann Martin and William Harold Martin) jury-demanded two-count 42 U.S.C. § 1983/Restatement, Second, Torts, § 46(1) Complaint (Appendix E 37a - 49a), and as plainly shown on the face of respondents' (Charles E. Bush and John W. Parker) Answer To Complaint As To Defendants Charles Bush And John Parker, Only (Appendix 1, 74a - 82a), there exist numerous genuine issues of material fact for

82a), there exist numerous genuine issues of material fact for district court jury determination - and not for Sixth Circuit per curiam Court determination.

Conclusion

The three-case (Civil No. 98CV10194, Civil No. 98CV10228, Civil No. 98CV10229) petitions for writ of certiorari should be granted.

Respectfully submitted,
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Date: June 14, 2001

APPENDIX

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APPENDIX A
NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
No. 00-1157
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
FILED
MARCH 27, 2001
LEONARD GREEN, Clerk

CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased; and WILLIAM HAROLD MARTIN,

Plaintiffs - Appellants

V.

JOSEPH L. LABELLE; CHARLES E. BUSH; and JOHN P. PARKER,

Defendants - Appellees

BEFORE: KRUPANSKY, BOGGS, and BATCHELDER, Circuit Judges.

PER CURIAM. Plaintiffs-appellants, Constance Ann Martin, as personal representative of the estate of Kirk William Martin, and William Harold Martin ("plaintiffs"), appeal the district court's decision granting summary judgment to defendants-Appellees, Joseph L. LaBelle, Charles E. Bush, and John P. Parker ("defendants"), in these consolidated civil rights actions, as well as the district court's award of sanctions against plaintiffs' counsel. For the following reasons, we affirm.

I

This case arises out of an incident on August 31, 1996, in which defendant Joseph LaBelle, a Michigan State Trooper, shot and killed

plaintiffs' decedent, Kirk William Martin, a fleeing
No. 00-1157
suspect in an armed robbery. According to the undisputed facts, Martin emerged from his car and pointed an assault weapon at LaBelle.

Plaintiffs filed three actions that are now consolidated. The first, Case No. 98-10194-BC, is a 42 U.S.C. § 1983 wrongful death claim filed by plaintiffs against defendant LaBelle. The case was filed in St. Clair County Circuit Court and removed by LaBelle to federal court. The second, Case No. 98-10228, involves the same parties and is a claim for declaratory relief arising out of the shooting involved in the wrongful death claim. The third, Case No. 98-10229, is a claim under 42 U.S.C. § 1983 on behalf of Martin's parents alleging intentional infliction of emotional distress against LaBelle as a result of the shooting and because of the amount of time Martin's body remained in a ditch after the shooting. This claim was also brought against defendants Bush and Parker, Michigan State Police supervisors who spoke with Martin's parents after the shooting, on the basis of Bush's having stated that troopers are trained to "shoot to kill" and to aim for the center of the mass of the body and Parker's having "nodded approvingly."

II

Prior to the district court's judgment, a magistrate judge's report and recommendation was issued recommending that summary judgment be granted to defendants. At the conclusion of the report and recommendation, the parties were instructed that they had ten days to object and seek review of the report and recommendation and that failure to file specific objections would constitute a waiver of any further right of appeal.

Plaintiffs' objections to the magistrate judge's report and recommendation were summary in nature, providing general legal standards and conclusory statements that plaintiffs met those

standards or that the magistrate judge erred in his recommendations. Plaintiffs failed even to attempt to identify facts relating to the shooting of Kirk William Martin that would establish a genuine issue of

material fact as to legal liability. In addition, plaintiffs did not cite legal authority to support their claims that defendants committed constitutional violations. Finally, plaintiffs did not contest the existence of, or circumstances leading to, the state court judgment that the magistrate judge relied upon in concluding that plaintiffs' claims against LaBelle should be dismissed on the basis of collateral estoppel and res judicata.

After the issuance of a magistrate judge's report and recommendation, an objecting party must "identify the portions of the magistrate's recommendation to which objection is made and the basis for the objection." *Miller v Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Otherwise a party waives subsequent review by the district court and appeal to this court. *See ibid.* This court has stated that "a general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious." *Ibid.* Quoting this court in *Howard v. Secretary of Health & Human Services*, 932 F.2d 505, 509 (6th Cir. 1991), the district court concluded that plaintiffs' objections constituted a "general objection to the entirety of the magistrate's report," which "has the same effects as would a failure to object." The district court did not err in its conclusion. Plaintiffs' general objections to the magistrate judge's report and recommendation are insufficient to preserve these issues for review on appeal.

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No. 00-1157

III

Even if we looked to the merits of plaintiffs' claims as briefed, these claims must fail.

A

Plaintiffs claim that LaBelle's shooting of Martin constituted an unreasonable seizure in violation of the Fourth Amendment and intentional infliction of emotional distress on Martin's parents. Plaintiffs previously brought the intentional infliction of emotional distress claim in an action they filed in state court, separate from plaintiffs' three cases in federal court that are now consolidated and form

the basis for this appeal. Plaintiffs' state court claim was originally filed in St. Clair County Circuit Court and later transferred to Saginaw County Circuit Court pursuant to a motion by LaBelle to change venue. The case was involuntarily dismissed on the basis that plaintiffs had not paid the required costs and filing fees within 56 days of the transfer, as mandated by the order changing venue and MCR 2.223(B)(1) and (2).

A federal court must give a state court judgment the same preclusive effect that the judgment would be given by the courts of the rendering state. See *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 85 (1984); *Vinson v. Campbell County Fiscal Court*, 820, F.2d 194, 197 (6th Cir. 1987). Furthermore, this court has made clear that, "[t}his principle applies to civil rights actions under Section 1983 with respect to issues actually litigated (collateral estoppel or issue preclusion) and issues which could have been but were not litigated in the state court proceeding (res judicata or claim preclusion)." *Vinson*, 820 F.2d at 197. Plaintiffs's state court claim against LaBelle was involuntarily dismissed. Under Michigan court rules, an involuntary dismissal is an adjudication on the merits. MCR 2.504(B)(3). Since this court must give the judgment the same preclusive effect

to that judgment as would the courts of Michigan, all of plaintiffs' claims against LaBelle are barred. Plaintiffs' intentional infliction of emotional distress claim against LaBelle is barred on the basis of the doctrine of collateral estoppel or issue preclusion since the issue was already litigated and decided in the state court action that was involuntarily dismissed. Plaintiffs' remaining claims against LaBelle arising out of Martin's death are barred on the basis of the doctrine of res judicata or claim preclusion since the claims should have been brought in plaintiffs' state court action.

B

Plaintiffs also brought claims against defendants Bush and Parker under 42 U.S.C. § 1983 for intentional infliction of emotional distress on the basis of Bush's statement to Martin's parents that troopers are trained to "shoot to kill" and to aim for thecenter of the mass

of the body and Parker's having "nodded approvingly." Plaintiffs' allegations against Bush and Parker fail on the basis that plaintiffs have not demonstrated the denial of a federal right, privilege, or immunity for purposes of stating a claim under Section 1983. Although Bush's statement and Parker's nodding may have made plaintiffs uncomfortable or upset, these actions did not violate plaintiffs' constitutional rights.

Although it appears that plaintiffs' claim was brought solely as an action under Section 1983, even if the claim is construed as being brought under Michigan state law, it fails. In order to bring a claim for intention infliction of emotional distress under Michigan law, plaintiffs must establish that the conduct of Bush and Parker was "extreme and outrageous." *Haverbush v. Powelson*, 551 N.W.2d 206, 209 (Mich. Ct. App. 1996). The actions of Bush and Parker in explaining how state troopers are trained to do their jobs does not rise to the level of extreme and outrageous conduct.

IV

Plaintiffs also appeal the denial of their motion to disqualify the magistrate judge reviewing this case. Plaintiffs' motion was based on the magistrate judge's issuance of an order directing that a dispositive motion be filed on behalf of defendants based on the content of defendants' answers and affirmative defenses, since they involved threshold legal issues which the Supreme Court has ordered be resolved before discovery takes place in qualified immunity cases. See *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Criss v. City of Kent*, 867 F.2d 259, 261 (6th Cir. 1988). This is not a sufficient basis for a motion to disqualify. A motion to disqualify pursuant to 28 U.S.C. § 455 must be based on extra-judicial, rather than judicial, conduct. See *City of Cleveland v. Krupansky*, 619 F.2d 576, 578 (6th Cir. 1980).

V

A district court's award of sanctions under FED.R.CIV.P 26(g)(3) is reviewed for abuse of discretion. See *Perkins v. General Motors Corp.*, 965 F.2d 597, 602 (8th Cir. 1992).

Defendants denied that plaintiffs stated a cause of action in their

answers to the three complaints plaintiffs filed in this case. In 1998, plaintiffs' counsel submitted requests for defendants to admit that two of the three complaints filed on behalf of plaintiffs stated a cause of action. After defendants filed their dispositive motion in July 1999, arguing that none of plaintiffs' allegations stated a cause of action, plaintiffs again filed requests to admit, most of which simply restated the requests to admit to which defendants had already responded. Defendants filed a motion for sanctions. Although the magistrate judge recommended that the motion be denied as moot, the district court found that the re-filing of requests to which defendants had already responded violated

FED R.CIV.P. 26(g)(2)(A) and 26(g)(3). The district court ordered plaintiffs' counsel to pay $300 in attorneys' fees to defendants for having had to respond to the requests and having had to file a motion for a protective order.

The district court did not abuse its discretion in ordering sanctions against plaintiffs' counsel. Requiring defendants to respond to requests to admit to which defendants previously responded and objected was unreasonable, unnecessary, and unduly burdensome. FED R.CIV.P. 26(g)(2)(A) and 26(g)(3). In such a situation, bad faith of counsel is not a necessary element before sanctions can be awarded under Rule 26(g). *See In re Byrd, Inc.*, 922 F.2d 1135, 1137 (10th Cir. 1991).

VI

For the foregoing reasons, the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CASE NUMBER: 98-10194
HONORABLE VICTORIA A. ROBERTS
CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased,

Plaintiff(s),

V.
JOSEPH L. LABELLE

Defendant(s).

CASE NUMBER: 98-10228
HONORABLE VICTORIA A. ROBERTS
CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased,

Plaintiff(s),

V.
JOSEPH L. LABELLE

Defendant(s).

CASE NUMBER: 98-10229
HONORABLE VICTORIA A. ROBERTS
CONSTANCE ANN MARTIN and
WILLIAM HAROLD MARTIN

Plaintiff(s)

V.
JOSEPH L. LABELLE, CHARLES E. BUSH and
JOHN P. PARKER,

Defendant(s).

ORDER ADOPTING MAGISTRATE JUDGE CHARLES E. BINDER'S DECEMBER 23, 1999 REPORT AND RECOMMENDATION

Appendix B

On December 23, 1999, Magistrate Judge Charles E. Binder issued a Report and Recommendation that the Court grant summary judgment of Plaintiffs' claims against Defendant Joseph LaBelle and dismiss Plaintiffs' claims against Defendants Charles Bush and John Parker for failure to state a claim. Plaintiffs have submitted two Objections to the Report and Recommendation. One Objection concerns Magistrate Judge Binder's jurisdiction to hold the hearing regarding Defendants' dispositive motion and the other alleges that the Recommendation is erroneous. Both of Plaintiffs' Objection are without merit.

Magistrate Judge Binder was authorized by statute and by court order to hear Defendants' dispositive motion and issue his Report and Recommendation. 28 U.S.C. § 636(b)(1) authorizes a judge to refer dispositive motions to a magistrate "to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for disposition..." Section 636(b)(1)(B). As allowed by § 636(b)(1), Judge Robert Cleland referred this action to Magistrate Judge Binder on May 21, 1999 with instructions to, *inter alia*, submit "any reports and recommendations as may be necessary, including reports on dispositive motions pursuant to Rules 12, 37 or 56..." In light of the fact that Magistrate Judge Binder explained his authority to hear the dispositive motion at the beginning of the hearing (Tr. at 3-5), Plaintiffs' jurisdictional challenge is most curious.[1]

Plaintiffs' other Objections fail to "identify the portions of the magistrat's

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recommendation to which objection is made and the basis for the objection." *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). In particular, Plaintiffs do not articulate any basis for objecting to Magistrate Judge Binder's opinion that their claims against Defendant LaBelle are barred by *res judicata* or for objecting to the conclusion that Plaintiffs have failed to state an actionable emotional distress claim against Defendants Bush and Parker. Plaintiffs' Objections constitute a "general objection to the entirety of the magistrate's re-

[1]The transcript of the hearing is attached to Plaintiffs' Jurisdictional Objection.

port" which "has the same effects as would a failure to object." *Howard v. Secretary of Health and Human Services*, 932 F.2d 505, 509 (6th Cir. 1991).

A remaining issue for the Court to determine is Defendants' Motion for Sanctions Pursuant to Fed.R.Civ.P. 26(g)(3).[2] Defendants argue that, for the purpose of harassment, Plaintiffs' counsel submitted three sets of requests to admit on October 18, 1999 that requested admissions that Plaintiffs' Complaints were genuine and stated causes of action. Prior to the filing of those requests to admit, Defendants had consistently maintained in pleadings that Plaintiffs' Complaints did not state causes of action. Additionally, one set of requests to admit filed on October 18, 1999 included nine requests that had already been submitted on October 2, 1998. Defendants had already responded or objected to those nine requests on October 8, 1998. In their Motion, Defendants request $300 in attorney fees for having to file their Motion and having to respond to the requests to admit.

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By signing a discovery request, an attorney is certifying that the request is being made in good faith and not for an improper purpose, including harassment. Rule 26(g)(2). If, without substantial justification, an attorney signs a discovery request that is made for the purpose of harassment, that attorney has violated Rule 26(g)(2). A court may order the offending attorney to pay the reasonable attorney fees incurred by the opposing party as a result of the violation. Rule 26(g)(3).

In this case, it is not clear to the Court that Plaintiffs' counsel submitted the requests to admit regarding the genuineness and merit of Plaintiffs' Complaint for the purpose of harassment. However, the Court finds that Plaintiffs' counsel's act of resubmitting requests to admit to which Defendants had already responded or objected was a form of harassment. In response to Defendants' Motion for Sanctions, Plaintiffs' counsel has offered no explanation for the re-submission of those requests to admit. Accordingly, the Court will grant Defendants' Motion for Sanctions.

THE COURT HEREBY GRANTS Defendant LaBelle's Mo-

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[2]Defendants' Motion for Protective Order Pursuant to Fed.R.Civ.P. 26(c) is now moot.

tion for Summary Judgment and **GRANTS** Defendant Bush and Defendant Parker's Motion to Dismiss **[document 37].**

THE COURT FURTHER GRANTS Defendants' Motion for Sanctions **[document 62]** and **ORDERS** Attorney Robert J. Lord to pay Defendants $300 in attorney fees on or before February 21, 2000.

Dated: FEB 3, 2000

(s) Victoria A. Roberts
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased,

Plaintiff,

V.

JOSEPH L. LABELLE

Defendant

Civil Action No. 98-CV-70879-DT
Hon. Robert H. Cleland

AMENDED COMPLAINT

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ALLEGATION OF JURISDICTION

Jurisdiction in this 42 USC § 1983/MCL 600.2922 four-count action is based on 28 USC § 1331 and arises from US Const, Am IV and Am XIV, "shocks the conscience" - Due Process Clause questions.

3. Defendant LaBelle is the "COMPLAINANT TPR JOSEPH LABELLE" referred to at page 1 of the 25-page "ARMED ROBBERY/HIGH SPEED CHASE/SHOOTING" MDSP Original Incident Report (Exhibit 2): and defendant LaBelle is the "COMPLAINANT/VICTIM" and the "INTERVIEW COMPLAINANT/VICTIM: Trooper Joseph LaBelle" referred to at page 3 of Exhibit 2.

4. On August 31, 1996, and for years theretofore, defendant LaBelle was a Michigan State Police Trooper who was trained, instructed and educated in the "shoot to kill" use and "shoot to kill" utilization of deadly force weapons issued to him.

5. On August 31, 1996, Kirk William Martin was a person who was constitutionally entitled to be secure in his person against unreasonable seizure, as guaranteed by US Const, Am IV; and, on said day, he was a person who was also constitutionally entitled to the "shocks the conscience" - substantive due process right, a substantive due process right concerning police officer deadly force action and conduct which offend "those canons of decency and fairness which express the notions of justice of English-speaking peoples even towards those charged with the most heinous crimes," as guaranteed by the Due Process Clause of US Const, Am XIV, and as authoritatively described in Wilson v Beebe, 770 F2d 578, 581-583 (CA 6, 1985).

COUNT ONE

Plaintiff's 42 USC § 1983/MCL 600.2922(1)(2)
Claim For Compensatory And Punitive Damages

1. Plaintiff is the Personal Representative of the Estate of Kirk William Martin, Deceased.

2. Kirk William Martin is the decedent indicated in the Certificate Of Death 1086833 (Exhibit 1).

6. On August 31, 1996, at about 7 a.m., and at the "road side" - "1-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal "Gunshot wound to pelvis" injury, as indicated in Exhibit 1, defendant LaBelle, under color of state law, unreasonably and maliciously seized Kirk William Martin by shooting, wounding and instantly killing him with his Sly-Sauer 9mm (model P226)

deadly force weapon, altogether, in such an unreasonable and malicious "shoot to kill" use and utilization of his said deadly force weapon, so as , altogether, to violate Kirk William Martin's right secured to him by US Const, Am IV.

7. On August 31, 1996, beginning at about 7 a.m., and at the "road-side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal "Gunshot wound to pelvis" injury, as indicated in Exhibit 1, defendant LaBelle, under color of state law, unreasonably and unconscionably killed plaintiff's son and allowed his dead body to remain unattended in a stagnant maggot-infesting water-filled ditch for some eight hours before his maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on September 2, 1996, altogether, in such an unreasonable and unconscionable "shoot to kill" use and "shoot to kill" utilization of his said deadly force weapon, so as to violate Kirk William Martin's "shocks the conscience" - substantive due process right secured to him by the Due Process Clause of US Const, Am XIV.

Wherefore, plaintiff personal representative requests a trial by jury and demands:

(1) a compensatory damages judgment against the defendant in the sum of $1,000,000; and

(2) a punitive damages judgment against the defendant in the sum of $1,000,000; and

(3) an award of 42 USC § 1988 attorney's fee.

COUNT TWO

Plaintiff Personal Representative's
42 USC § 1983/MCL 600.2922 Parental Mother's Claim
For The Loss Of Her Son's Society and Companionship

1. Plaintiff is the Personal Representative of the Estate of Kirk William Martin, Deceased; and plaintiff is the parental mother of Kirk William Martin, as therefor provided in MCL 600.2922(3); and Kirk William Martin, the plaintiff's son, is the decedent indicated in Exhibit 1.

2. Plaintiff incorporates by reference each and every allega-

tion stated and contained in paragraph 3 of plaintiff's Count One complaint.

3. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 4 of plaintiff's Count One complaint.

4. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 5 of plaintiff's Count One complaint.

5. On August 31, 1996, at about 7 a.m., and at the "road side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal "Gunshot wound to pelvis" injury, as indicated in Exhibit 1, defendant LaBelle unreasonably, intentionally, recklessly, wrongfully and maliciously seized Kirk William Martin by shooting, wounding and instantly killing him and allowing Kirk William Martin's dead body to remain unattended in a stagnant maggot-infesting water-filled ditch for some eight hours before plaintiff's son's maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on September 2, 1996, altogether in such an unreasonable, intentional, reckless, wrongful, grossly negligent and malicious "shoot to kill" use and "shoot to kill" utilization of defendant LaBelle's said deadly force weapon as to violate plaintiff's son's rights as secured to him by US Const, Am IV, and by the Due Process Clause of US Const, Am XIV, so as to cause the plaintiff parental mother to suffer the fatal loss of her son's society and companionship.

Wherefore, the plaintiff parental mother requests a trial by jury and demands:

(1) a compensatory damages judgment against the defendant in the sum of $1,000,000; and

(2) a punitive damages judgment against the defendant in the sum of $1,000,000; and

(3) an award of 42 USC § 1988 attorney's fee.

COUNT THREE

Plaintiff Personal Representative's
42 USC § 1983/MCL 600.2922 Parental Father's Claim
For The Loss Of His Son's Society And Companionship

Appendix C

1. Plaintiff is the Personal Representative of the Estate of Kirk William Martin, Deceased: and William Harold Martin is the parental father of Kirk William Martin, as therefor provided in MCL 600.2922(3); and Kirk William Martin is the decedent referred to in Exhibit 1.

2. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 3 of plaintiff's Count One complaint.

3. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 4 of plaintiff's Count One complaint.

4. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 5 of plaintiff's Count One complaint.

5. On August 31, 1996, at about 7 a.m., and at the "road side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal "Gunshot wound to pelvis" injury, as indicated in Exhibit 1, defendant LaBelle unreasonably, intentionally, recklessly, wrongfully and maliciously seized Kirk William Martin by shooting, wounding and instantly killing him and allowing Kirk William Martin's dead body to remain unattended in a stagnant maggot-infesting water-filled ditch for some eight hours before William Harold Martin's son's maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on September 2, 1996, altogether in such an unreasonable, intentional, reckless, wrongful, grossly negligent "shoot to kill" use and "shoot to kill" utilization of defendant LaBelle's said deadly force weapon as to violate William Harold Martin's son's rights as secured to him by US Const, Am IV, and by the Due Process Clause of US Const, Am XIV, so as, altogether, to cause William Harold Martin, Kirk William Martin's parental father, to suffer the loss of his son's society and companionship.

Wherefore, Kirk William Martin's paternal father, William Harold Martin, requests a trial by jury and demands:

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(1) a compensatory damages judgment against the defendant in the

amount of $1,000,000; and

(2) a punitive damages judgment against the defendant in the amount of $1,000,000; and

(3) an award of 42 USC § 1988 attorney's fee.

COUNT FOUR

Plaintiff Personal Representative's
42 USC § 1983/MCL 600.2922 Daughter's Claim
For Loss Of Her Father's Financial Support And
For The Loss Of His Society And Companionship

1. Plaintiff is the Personal Representative of the Estate of Kirk William Martin, Deceased; and Elizabeth Ann Millsap is the daughter of Kirk William Martin, as therefor provided in MCL 600.2922(3); and Kirk William Martin, Elizabeth Ann Millsap's father, is the decedent indicated in Exhibit 1.

2. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 3 of plaintiff's Count One complaint.

3. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 4 of plaintiff's Count One complaint.

4. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 5 of plaintiff's Count One complaint.

5. On August 31, 1996, at about 7 a.m., and at the "road

side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal "Gunshot wound to pelvis" injury, as indicated in Exhibit 1, defendant LaBelle unreasonably, intentionally, recklessly, wrongfully and maliciously seized Kirk William Martin by shooting, wounding and instantly killing him and allowing Elizabeth Ann Millsap's father's dead body to remain unattended in a stagnant maggot-infesting water -filled ditch for some eight hours before Kirk William Martin's maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on September 2, 1996, altogether in such an unreason-

able, intentional, reckless, wrongful, grossly negligent and malicious "shoot to kill" use and "shoot to kill" utilization of defendant LaBelle's said deadly force weapon as to violate Elizabeth Ann Milsap's father's right as secured to him by US Const, Am IV, and by the Due Process Clause of US Const, Am XIV, so as, altogether, to cause Elizabeth Ann Millsap to suffer the loss of her father's financial support and the fatal "shocks the conscience" loss of her father's society and companionship.

Wherefore, plaintiff personal representative, for Elizabeth Ann Millsap, who is the plaintiff personal representative's granddaughter, requests a trial by jury and demands;

(1) a compensatory damages judgment against defendant in the amount of $5,000,000; and

(2) a punitive damages judgment against the defendant in the amount of $5,000,000; and

(3) an award of 42 USC § 1988 attorney's fee.

Dated: June 25, 1998

(s) Robert J. Lord (P16797)
Attorney for plaintiff
8388 Dixie Highway
Fair Haven, MI 48023
(810) 725-4231

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased,

Plaintiff,

V.

JOSEPH L. LABELLE,

Defendant.

98-72074
Gerald Rosen

COMPLAINT FOR DECLARATORY RELIEF

Robert J. Lord (P16797)
Attorney for plaintiff
8388 Dixie Highway
Fair Haven, MI 48023
(810) 725-4231

ALLEGATION OF JURISDICTION

Jurisdiction in this 42 USC § 1983 suit in equity for declaratory relief is founded on 28 USC § 1331 and arises from US Const, Am IV, and US Const, Am XIV, questions; and plaintiff states her claim for declaratory relief pursuant to 28 USC §§ 2201 and 2202 as follows:

1. Plaintiff Constance Ann Martin, by Letters of Authority (Exhibit 1), is the Personal Representative of the Estate of Kirk William Martin, Deceased; and the deceased Kirk William Martin is the "decedent" indicated in the Certificate Of Death 1086833 (Exhibit 2); and Kirk William Martin is the "decedent" who died on "August 31, 1996, at "App 7:00 AM" as a result and consequence of a homicidal "Gunshot wound to pelvis" injury, as indicated in said death

certificate (Exhibit 2).

2. On August 31, 1996, Kirk William Martin was a person who was not only constitutionally entitled to be secure in his person against unreasonable seizure, as guaranteed by US Const, Am IV, but he was also constitutionally entitled to the "shocks the conscience" - substantive due process right, a substantive due process right concerning homicidal deadly force "shoot to kill" action and homicidal deadly force "shoot to kill" conduct which offend "those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous crimes," as guaranteed by the Due Process Clause of US Const, Am XIV, and as authoritatively described in Wilson v Beebe, 770 F2d 578, 581-583 (CA 6, 1985), citing, at 586, Tennessee v Garner, 471 US 1, 105 S.Ct. 1694, 1699, 85 L.Ed. d.1 (1985),

3. Defendant Joseph L. LaBelle is the so-called "COMPLAINANT TPR. JOSEPH LABELLE" and the "Joe LaBelle" referred to at page 1 of the 25-page "Sat. Aug 31, 1996" - "0730" so-called "ARMED ROBBERY/HIGH SPEED CHASE/SHOOTING" - Michigan Department of State Police ORIGINAL INCIDENT REPORT (Exhibit 3); and defendant Joseph L. LaBelle:

(1) is the so-called "COMPLAINANT/VICTIM: NAM: TPR. JOSEPH LABELLE" and the so-called "INTERVIEW COMPLAINANT/VICTIM: Trooper Joseph LaBelle," and the "Tpr. LaBelle," referred to at page 3 of Exhibit 3; and

(2) is the "Tpr. LaBelle" and the TROOPER JOE. LABELLE" referred to at page 11 of Exhibit 3; and

(3) is the "Tpr. LaBelle" referred to at pages 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 17 of Exhibit 3.

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4. On August 31, 1996, and for years theretofore, defendant Joseph L. LaBelle was a Michigan Department of State Trooper who was educated, instructed, and trained, in the "shoot to kill" use and the "shoot to kill" utilization of a Sig Sauer 9mm (model P226) deadly force weapon issued to defendant Joseph L. LaBelle and used, and utilized, by defendant Joseph LaBelle in shooting, wounding, and instantly killing Kirk William Martin.

5. On August 31, 1996, and for more than 10 years since

Tennessee v Garner, 471 US 1, 85 L Ed 2d 1, 105 S Ct 1694 (1985), and for more than 10 years since Wilson v Beebe, 770 F2d 578 (CA 6, 1985), all Michigan State Police Troopers have been educated, instructed, and trained, in the "shoot to kill" use, and the "shoot to kill" utilization, of Sig Sauer 9mm (model P226) deadly force weapons issued to Michigan State Police Troopers, altogether notwithstanding the 1985 Opinion [by White, J., joined by Brennan, Marshall, Blackmun, Powell, and Stevens, JJ. in Tennessee v Garner, supra,] that

(1) the Fourth Amendment prohibits the use of deadly force to prevent the escape of a suspected felon unless it is necessary to prevent the escape and the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others; and that

(2) the apprehension of a person by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment; and

(3) that the use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.

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6. On August 31, 1996, at a time hardly more than a few seconds preceding the "App 7:00 AM" time, and at the "road side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal "Gunshot wound to pelvis" injury, as indicated in said death certificate (Exhibit 2), the said defendant Joseph L. LaBelle not only

(1) unreasonably seized Kirk William Martin by shooting, wounding and instantly killing him, at said location, so as, altogether, to violate Kirk William Martin's right secured to him by US Const, Am IV; but also

(2) unreasonably seized Kirk William Martin by shooting, wounding and instantly killing him, at the said location where Kirk William Martin's dead body was allowed to remain in a stagnant maggot-infesting water-filled ditch for some eight hours before his maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on Sep-

tember 2, 1996, altogether in such an unreasonable deadly force "shoot to kill" manner of action and conduct so as, altogether, to violate Kirk William Martin's "shocks the conscience" - substantive due process right secured to him by the Due Process Clause of US Const, Am XIV.

(7) On September 6, 1996, the day following the burial of Kirk William Martin at Oaklawn Cemetery in Algonac, MI, Michigan State Police Lieutenant Charles E. Bush, who is

(1) the "F/Lt. Charles E. Bush" referred to in the August 31, 1996, Michigan State Police "News Release" (Exhibit 4); and

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(2) the "Lt. Charles Bush" referred to in THE DETROIT NEWS, page 4B. 9/1/96 newspaper publication (Exhibit 5); and

(3) the "Lt. Bush" referred to in the TIMES HERALD, front page, 9/1/96 newspaper publication (Exhibit 6); and

(4) the "Lt. Charles E. Bush" referred to in THE BAY TIMES, page 1B, 9/4/96 newspaper publication (Exhibit 7); and

(5) the Michigan State Police Lieutenant Charles E. Bush who telephoned plaintiff Constance Ann Martin, Kirk William Martin's mother, on September 6, 1996, requesting her to "sit down" with him "to discuss the entire investigation," as referred to in Exhibit 7.

8. On September 12, 1996, plaintiff Constance Ann Martin did "sit down" with said Michigan State Police Lieutenant Charles E. Bush to hear him, in horror, several times affirmatively and emphatically say that all Michigan State Police Troopers were not only trained to use and utilize their deadly force weapons to "shoot to kill" but to aim their deadly force "shoot to kill" weapons at "the center of the mass of the body."

9. As a result and consequence of the a forestated US Const, Am IV, and US Const, Am XIV, questions and factual matters, a case of actual controversy has arisen and exists between the parties, namely:

(A) plaintiff Constance Ann Martin, Personal Rep-

resentative of the Estate of Kirk William Martin, claims that the aforestated homicidal deadly force "shoot to kill" training of all Michigan State Troopers is not only in violation of a person's US Const, Am IV, right; and not only in further violation of a person's "shocks the conscience" - substantive due

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process right, as guaranteed by the Due Process Clause of US Const, Am XIV; but also in defiant disregard of the aforecited Tennessee v Garner, supra, 1985 Opinion; whereas, altogether, to the contrary

(B) the defendant Michigan State Police Trooper, claims that his deadly force "shoot to kill" use and utilization of his deadly force weapon in shooting, wounding, and instantly killing the plaintiff's son was justifiable [as shown by the June 13, 1997, correspondence (Exhibit 8)], notwithstanding the Tennessee v Garner, supra, 1985 Opinion as aforestated in the foregoing paragraph 5(1)(2)(3) of the plaintiff's foregoing complaint for declaratory relief.

Wherefore, plaintiff Constance Ann Martin, Personal Representative of the Estate of Kirk William Martin, Deceased, respectfully requests this District Court to order a speedy hearing of the plaintiff's 28 USC §§ 2201 and 2202 claim fordeclaratory relief; and plaintiff request sthat this District Court grant the plaintiff a judgment declaring that the plaintiff's claim, as stated in paragraph 9(A) of her foregoing complaint, is, and in equity and good conscience should be, adjudged in violation of US Const, Am IV, and the Due Process Clause of US Const, Am XIV; and plaintiff requests that this District Court, after notice and hearing, grant the plaintiff such further declaratory relief as this District Court may deem appropriate.

Dated: May 20, 1998

(s) Robert J. Lord (P16797)
Attorney for plaintiffs
8388 Dixie Highway
Fair Haven, MI 48023
(810) 725-4231

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE ANN MARTIN, and WILLIAM HAROLD MARTIN,

Plaintiffs,

V.

JOSEPH L. LABELLE, CHARLES E. BUSH, and JOHN P. PARKER,

Defendants.

98-40197
Paul V. Gadola

COMPLAINT

Robert J. Lord (P16797)
Attorney for plaintiffs
8388 Dixie Highway
Fair Haven, MI 48023
(810) 725-4231

ALLEGATION OF JURISDICTION

Jurisdiction in this 42 USC § 1983 civil action is founded on 28 USC § 1331 and arises from US Const, Am IV, and US Const, Am XIV, questions; and the plaintiffs state their two-count Restatement, Second, Torts 2d, § 46(1) claims for compensatory and punitive damages against the defendants for their maliciously extreme and outrageous conduct intentionally, recklessly and maliciously causing severe emotional distress and resulting bodily harm to plaintiff Constance Ann Martin and plaintiff William Harold Martin, as follows:

COUNT ONE

1. Plaintiff Constance Ann Martin is the "INFORMANT'S

NAME" and the "MOTHER'S NAME" of her son Kirk William Martin, the "DECEDENT'S NAME," as indicated in the Certificate Of Death 1086833 (Exhibit 1).

2. On "Aug 31, 1996" - "App 7:00 AM," at the "road side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal deadly force "Gunshot wound to pelvis" injury, as so indicated in Exhibit 1, the plaintiff's son was a person who not only constitutionally entitled

(1) to the right to be secure in his person against unreasonable seizure, as guaranteed by US Const, Am IV; but also constitutionally entitled

(2) to the "shocks the conscience" - substantive due process right, a right concerning homicidal deadly force action and conduct which offend "those canons of decency and fairness which express the notions of justice of English-speaking peoples even towards those charged with the most heinous crimes," as guaranteed by the Due Process Clause of US Const, Am XIV, and as authoritatively described din Wilson v Beebe, 770 F2d 578, 581-583 (CA 6, 1985), citing Tennessee v Garner, 471 US 1, 85 L Ed 2d 1, 105 S Ct 1694 (1985).

3. Defendant Joseph L. LaBelle is the so-called "COMPLAINANT TPR. JOSEPH LABELLE" and the "Joe LaBelle" referred to at page 1 of the 25-page "Sat, Aug 31, 1996" - "0730" so-called "ARMED ROBBERY/HIGH SPEED CHASE/SHOOTING" Michigan Department of State Police ORIGINAL INCIDENT REPORT (Exhibit 2); and defendant Joseph L. LaBelle:

(1) is the so-called "COMPLAINANT/VICTIM: NAM: TPR. JOSEPH LABELLE" and the so-called "INTERVIEW COMPLAINANT/VICTIM: Trooper Joseph LaBelle," and the "Tpr. LaBelle," referred to at page 3 of Exhibit 2: and

(2) is the "Tpr. LaBelle" and the "TROOPER JOE LABELLE:

referred to at page 11 of Exhibit 2: and

(3) is the "Tpr. LaBelle" referred to at pages 4, 5, 6, 7, 8, 9,10, 12, 13, 14, 15 and 17, of Exhibit 2; and

(4) is the "Trooper Joe LaBelle" referred to at page

16 of Exhibit 2; and

(5) is the "Joseph L. LaBelle" and is one of the "four officers" as so referred to in THE SAGINAW NEWS, page B2, October 1, 1996, newspaper publication (Exhibit 3); and

(6) is the "State Police Trooper Joseph L. LaBelle" and is one of the "four officers" referred to in THE BAY CITY TIMES, at pages 1B-2B, 10/1/96, newspaper publication (Exhibit 4),

4. Defendant Charles E. Bush is the "F/Lt. Charles E. Bush" referred to in the August 31, 1996, "MICHIGAN STATE POLICE" - "News Release" (Exhibit 5); and defendant Charles E. Bush

(1) is the "Lt. Bush" referred to in the TIMES HERALD, front page, 9/1/96 newspaper publication (Exhibit 6); and

(2) is the "Lt. Charles Bush of the Michigan State Police in Bridgeport," and the "Bush," referred to in THE DETROIT NEWS, page 4B, September 1, 1996, newspaper publication (Exhibit 7); and

(3) is the "Lt. Charles E. Bush" referred to in THE TIMES HERALD page 10A, September 2, 1998, newspaper publication (Exhibit 8); and

(4) is the "Lt. Charles E. Bush, commander of the State Police Bridgeport post" referred to in THE TIMES HERALD, page 3A, September 5, 1996, newspaper publication (Exhibit 9); and

(5) is the "Lt. Charles E. Bush, commander of the State Police Bridgeport post" and the "Bush" referred to in THE BAY

CITY TIMES, page 1B, September 4, 1996, newspaper publication (Exhibit 10).

5. Defendant John P. Parker (1) is the "Lt. John Parker, commander of the Michigan State Police post in Bay City" and the "Parker" referred to in THE BAY CITY TIMES, pages 1A-2A, September 1, 1996, newspaper publication (Exhibit 11); and (2) is the "Lt. John Parker, commander of the state police Bay City post" referred to in THE SAGINAW NEWS, page 1A, September 1, 1996, newspaper publication (Exhibit 12).

6. On August 31, 1996, and for years theretofore, defendant Joseph L. LaBelle was a Michigan State Police Trooper who was educated, instructed and trained in the "shoot to kill" use and the

"shoot to kill" utilization of a Sig Sauer 9mm (model P226) deadly force weapon issued to him and used, and utilized, by defendant Joseph L. LaBelle in shooting, wounding and instantly killing Kirk William Martin.

7. On August 31, 1996, at a time hardly more than a few seconds preceding the "App 7:00 AM" time, and at the "road side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal deadly force "Gunshot wound to pelvis" injury, as so indicated in the Exhibit 1 death certificate, the defendant Michigan State Police Trooper Joseph L. LaBelle not only:

(1) unreasonably seized Kirk William Martin by shooting, wounding and instantly killing him with his Sly Sauer 9mm (model P226) deadly force weapon, at said road side" location, so as, altogether, in such an intentional, reckless and maliciously extreme, in degree, and outrageous, in character, manner of conduct so as, altogether, not only to violate Kirk William Martin's right secured to him by US Const, Am IV; but also

(2) unreasonably seized Kirk William Martin by shooting, wounding and instantly killing him with his Sly Sauer 9mm (model P226) deadly force weapon, at the said "road side" location where Kirk William Martin's dead and decaying body was allowed to remain in a stagnant maggot-infesting water-filled ditch for some eight hours before his maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on September 2, 1996, altogether in such an intentional, reckless and maliciously extreme, in degree, and outrageous, in character, manner of conduct so as, altogether, to violate Kirk William Martin's "shocks the conscience" - substantive due process right secured to him by the Due Process Clause of US Const, Am XIV; but also

(3) to cause the plaintiff Constance Ann Martin, Kirk William Martin's mother, to suffer daily severe emotional distress and to suffer the resulting bodily harm of daily aggravation of her pre-existing disease commonly know as Hyperthyroidism.

8. On September 6, 1996, the day following the burial of Kirk William Martin at Oalkawn Cemetery in Algonac, Michigan, defendant Charles E. Bush, for himself and for defendant John P.

Parker, telephoned the plaintiff requesting her to "sit down" with him and defendant John P. Parker "to discuss the entire investigation," as referred to in Exhibit 10.

9. On September 12, 1996, plaintiff Constance Ann Martin, at the Bridgeport Michigan State Police Post, did "sit down" with

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defendant Charles E. Bush (accompanied by defendant John P. Parker), to the plaintiff's expressed horror, to hear him (defendant Charles E. Bush with defendant John P. Parker's nodded approval) several times say, in emphatic sum and emphatic substance, that all Michigan State Police Troopers were not only trained to use and utilize their deadly force weapons "to shoot to kill" but also to aim their deadly force weapons "at the center of the mass of the body," altogether, in such an intentional, reckless and maliciously extreme, in degree, and outrageous, in character, manner of conduct so as, altogether, not only to violate a "shoot to kill" - victim's right secured by US Const, Am IV, and by the Due Process Clause of US Const, Am XIV, but also to cause plaintiff Constance Ann Martin to suffer continuing daily severe emotional distress and continuing daily resulting bodily harm of aggravation of her pre-existing disease commonly known as Hyperthyroidism.

Wherefore, plaintiff Constance Ann Martin requests a trial by jury and claims:

(1) a compensatory damages judgment against the defendants in the amount of $1,000,000 dollars; and

(2) a punitive damages judgment against the defendants in the amount of $1,000,000; and

(3) costs and a reasonable award of 42 USC § 1988 attorney's fee.

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COUNT TWO

1. Plaintiff William Harold Martin is the "FATHER'S NAME" of Kirk William Martin's, the "DECEDENT'S NAME," as so indicated in the Certificate Of Death 1086833 (Exhibit 1).

2. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 2 of plaintiff Constance Ann

Martin's count one complaint.

3. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 3 of plaintiff Constance Ann Martin's count one complaint.

4. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 4 of plaintiff Constance Ann Martin's count one complaint.

5. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 5 of plaintiff Constance Ann Martin's count one complaint.

6. Plaintiff incorporates by reference each and every allegation stated and contained in paragraph 6 of plaintiff Constance Ann Martin's count one complaint.

7. On August 31, 1996, at a time hardly more than a few seconds preceding the "App 7:00 AM" time, and at the "road side" - "I-75 N of M81, Saginaw Co. MI" location of Kirk William Martin's homicidal deadly force "Gunshot wound to pelvis" injury, as so indicated in the Exhibit 1 death certificate, the defendant Michigan State Police Trooper Joseph L. LaBelle not only:

(1) unreasonably seized Kirk William Martin by shooting, wounding and instantly killing him with his Sig Sauer 9mm (model P226) deadly force weapon, at the said "road side"

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location, altogether, in such an intentional, reckless and maliciously extreme, in degree, and outrageous, in character, manner of conduct so as, altogether, not only to violate Kirk William Martin's right secured to him by US Const, Am IV; and not only

(2) unreasonably seized Kirk William Martin by shooting, wounding and instantly killing him with his Sig Sauer 9mm (model P226) deadly force weapon, at the said "road side" location where Kirk William Martin's dead and decaying body was allowed to remain in a stagnant maggot-infecting water-filled ditch for some eight hours before his maggot-infected dead body was disposed of by transportation for burial at Oaklawn Cemetery in Algonac, Michigan, on September 2, 1996, altogether, in such an intentional, reckless and maliciously extreme, in degree, and outrageous, in character, manner of conduct so as, altogether, not only to violate Kirk Wil-

liam Martin's "shocks the conscience" - substantive due process right secured to him by the Due Process Clause of US Const, Am XIV; but also

(3) to cause the plaintiff William Harold Martin, Kirk William Martin's father, to suffer daily severe emotional distress and to suffer the resulting bodily harm of daily aggravation of his pre-existing disease commonly known as Ankylosis Spondylitis.

8. On September 6, 1996, the day following the burial of Kirk William Martin at Oaklawn Cemetery in Algonac, Michigan, defendant Charles E. Bush, for himself and for defendant John P. Parker, telephoned the plaintiff requesting him to "sit down" with him and defendant John P. Parker "to discuss the entire

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investigation," as referred to in Exhibit 10.

9. On September 12, 1998, plaintiff William Harold Martin, at the Bridgeport Michigan State Police Post, did "sit down" with defendant Charles E. Bush (accompanied by defendant John P. Parker), to the plaintiff's unexpressed horror, to hear him (defendant Charles E. Bush with defendant John P. Parker's stone-faced approval) several times assertively and boldly say that all Michigan State Police Troopers were not only trained to use and utilize their deadly force weapons "to shoot to kill" but also to aim their deadly force weapons "at the center of the mass of the body," altogether, in such an intentional, reckless and maliciously extreme, in degree, and outrageous, in character, manner of conduct so as, altogether, not only to violate a "shoot to kill" - victim's right secured by US Const, Am IV, and by the Due Process Clause of US Const, Am XIV, but also to cause plaintiff William Harold Martin to suffer continuing severe emotional distress and continuing daily resulting bodily harm of aggravation of his pre-existing disease commonly known Ankylosis Spondylitis.

Wherefore, plaintiff William Harold Martin requests a trial by jury and claims:

(1) a compensatory damages judgment against the defendants in the amount of $1,000,000;

(2) a punitive damages judgment against the defendants in the amount of $1,000,000; and

(3) costs and a reasonable award of 42 USC § 1988 attorney's fee.

Dated: June 8, 1998

(s) Robert J. Lord (P16797)
Attorney for plaintiff
8388 Dixie Highway
Fair Haven, MI 48023
(810) 725-4231

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased,

Plaintiff,

V.

JOSEPH L. LABELLE,

Defendant.

98-CV-70879
Hon. Robert H. Cleland

Robert J. Lord (P16797)
Attorney for plaintiff

Mark V. Schoen (P23576)
Attorney for Defendant
Michigan Department of Attorney General
P.O. Box 30217
Lansing, Michigan 48909
(517) 373-6096

DEFENDANT LABELLE'S
ANSWER TO AMENDED COMPLAINT

Defendant, Joseph L. LaBelle, by his undersigned attorneys, says as follows for his answer to plaintiff's complaint:

1. Defendant neither admits nor denies plaintiff's status or appointment as personal representative for lack of personal knowledge.

2. Defendant admits the allegations in paragraph 2 of plaintiff's complaint.

3. Without waivng any objections to hearsay, relevance, ma-

teriality or competence, defendant admits that he is the person identified in the referenced police report.

4. Defendant admits he was a State Trooper on the date alleged and had been one for some time previously. Defendant admits that he has been trained in the use of weapons issued to him. Defendant denies that his training is appropriately characterized by plaintiff.

5. Defendant states that he is not reasonably able to coherently respond to this paragraph for the reason that it is incoherent, argumentative and run on in nature.

Defendant need not respond to the legal conclusions contained in this paragraph and defendant denies violating any actionable duty or right under either state or federal law that may have been owed to plaintiff's decedent.

6. Defendant admits that he was present at the date, time and location alleged and that he fired his weapon at plaintiff's decedent. Defendant denies that his use of his weapon was unjustified, unreasonable or malicious. Defendant states that his use of his weapon on the date and time alleged was justified as self defense, defense of others and to prevent the escape of an armed and dangerous fleeing felon.

7. Defendant admits that he was present at the date, time and location alleged and that he fired his weapon at plaintiff's decedent. Defendant denies that his use of his weapon was unjustified, unreasonable or malicious. Defendant states that his use of his weapon on the date and time alleged was justified as self defense, defense of others and to prevent the escape of an armed and dangerous fleeing felon. For further answer, defendant states that, after he fired his weapon at

decedent, the decedent disappeared into a ditch armed with an assault rifle. Defendant did not know that plaintiff had been hit. Defendant then withdrew to a position of safety to wait for assistance and officers with equipment that would enable them to approach the ditch into which plaintiff had gone without exposing themselves to danger. Once additional officers with appropriate equipment arrived and it was determined that plaintiff's decedent had died, this defen-

dant was no longer in charge of the scene and had no control over or role in the disposition of decedent's body.

COUNT TWO

1. Defendant incorporates as though fully set forth herein his response to paragraphs 1 and 2 of Count One.

2. Defendant incorporates as though fully set forth herein his response to paragraph 3 of Count One.

3. Defendant incorporates as though fully set forth herein his response to paragraph 4 of Count One.

4. Defendant incorporates as though fully set forth herein his response to paragraph 5 of Count One.

5. Defendant incorporates as though fully set forth herein his response to paragraphs 6 and 7 of Count One.

COUNT THREE

1. Defendant incorporates as though fully set forth herein his response to paragraphs 1 and 2 of Count One.

2. Defendant incorporates as though fully set forth herein his response to

-3-

paragraph 3 of Count One.

3. Defendant incorporates as though fully set forth herein his response to paragraph 4 of Count One.

4. Defendant incorporates as though fully set forth herein his response to paragraph 5 of Count One.

5. Defendant incorporates as though fully set forth herein his response to paragraphs 6 and 7 of Count One.

COUNT FOUR

1. Defendant incorporates as though fully set forth herein his response to paragraphs 1 and 2 of Count One.

2. Defendant incorporates as though fully set forth herein his response to paragraph 3 of Count One.

3. Defendant incorporates as though fully set forth herein his response to paragraph 4 of Count One.

4. Defendant incorporates as though fully set forth herein

his response to paragraph 5 of Count One.

5. Defendant incorporates as though fully set forth herein his response to paragraphs 6 and 7 of Count One.

WHEREFORE defendant requests that this Court dismiss plaintiff's claim in its entirety and order any other relief that it deems equitable and just.

SPECIAL AND AFFIRMATIVE DEFENSES

1. Defendant is entitled to public employee immunity. MCL 691.1407(2).

2. Defendant is entitled to qualified immunity with respect to any

allegations of violations of either federal or state constitutional rights.

3. Any damage, injury or loss suffered by plaintiff's decedent or heirs was caused in whole or in part by plaintiffs decedent's intentional, willful, grossly negligent and/or negligent acts including, but not limited to, the following acts or omissions:

A. Participating in an armed robbery, fleeing and eluding police and placing police in fear of deadly peril by loading, displaying and using an assault rifle in a manner that reasonably caused defendant and other officers to believe that their lives and the lives of others were in peril;

B. Announcing an intent to forcibly resist arrest with the use of a firearm;

C. Acting in concert with another individual in the above referenced acts or omission and/or failing to prevent or discourage the other individual from doing the referenced acts or omissions;

D. Being intoxicated on alcohol and/or drugs while participating in the above described acts or omissions.

4. Any action taken by defendant with respect to plaintiff's decedent was justified and reasonable as defense of self and others and/or reasonable force to effect an arrest and/or present the escape of an armed and dangerous felon.

5. Defendant reserves all rights with regard to apportion-

ment of fault and collateral source set offs as well as any other right pursuant to the statutes commonly referred to as tort reform.

6. Plaintiff's complaint fails to state a cause of action.

7. Plaintiff's complaint is frivolous thereby entitling defendant to costs and attorney fees pursuant to 42 U.S.C. § 1988.

WHEREFORE defendant requests that this Court dismiss plaintiff's claim in its entirety and order any other relief that it deems equitable and just.

DEFENDANT'S RELIANCE ON PLAINTIFFS' JURY DEMAND

Defendant, by his undersigned counsel, hereby relies on the jury demand filed by plaintiff.

Date: July 10, 1998

Respectfully submitted,
FRANK J. KELLY
Attorney General

(s)Mark V. Schoen (P23576)
Assistant Attorney General

Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
Telephone: (517) 373-6096

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE ANN MARTIN, Personal Representative of the Estate of Kirk William Martin, Deceased,
Plaintiff,

V.

JOSEPH L. LABELLE,
Defendant.

Case No.98-72074
Hon. Gerald E. Rosen

Robert J. Lord (P16797)
Attorney for Plaintiff

Mark V. Schoen (P23576)
Attorney for Defendant
Michigan Department of Attorney General
Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
(517) 373-6096

DEFENDANT'S
ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, by his undersigned attorneys, answers plaintiff's complaint as follows:

JURISDICTION

Defendant denies plaintiff's complaint states a cause of action under 42 U.S.C.

§ 1983 and for that reason denies this Court has jurisdiction.

COUNT ONE

1. Defendant has no personal knowledge as to the plaintiff's relationship to the decedent referenced in the death certificate attached to plaintiff's complaint.

2. Defendant need not respond to the legal conclusions contained in this paragraph. If any response is required defendant denies that the statement of law contained in this paragraph is accurate or material to defendant.

3. Defendant, without waiving any objection to hearsay or materiality, admits that Joseph LaBelle is the person referenced in the various sections of the police report appended to plaintiff's complaint with respect to suballegations (1)-(3).

4. Defendant admits that he has been a State Trooper for a number of years. Defendant admits that he has been trained in the use of firearms including the Sig-Sauer .9mm pistol. Defendant denies that the characterization of his training in this paragraph is accurate. Defendant admits he fired shots at decedent on the date alleged. Defendant did not know on the date of the incident that the decedent was killed instantly and does not have that knowledge to the present.

5. Defendant denies that he has been trained in any manner inconsistent with the case cited. Defendant affirmatively states that his use of deadly force was justified as self defense, defense of others and to prevent the escape of an armed and dangerous fleeing felon who posed a threat of death and/or serious injury to defendant and others.

6. Defendant admits Joseph LaBelle was present and justifiably fired shots at the decedent on the date and at the location alleged.

(1) It is denied that Joseph LaBelle unreasonably seized decedent or

that defendant's actions in shooting at decedent were in any way improper or unjustified. Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiff.

(2) It is denied that defendant unreasonably seized decedent

or that defendant's actions in shooting at decedent were in any way improper or unjustified. Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiff. The balance of the allegations in this sub-paragraph are denied as untrue.

7. Defendant has no knowledge of the date of decedent's funeral. It is admitted that on or about the date alleged, Lt. Bush arranged to meet with decedent's family to discuss aspects of the incident. Without waiving any objections to hearsay, relevance or materiality, defendant does not dispute that Lt. Bush is the person identified in the referenced newspaper articles or that he telephoned decedent's mother to discuss the incident with her.

8. It is admitted that on or near the date alleged Lts. Bush and Parker met with decedent's family to discuss aspects of the incident. Defendants deny that this discussion is accurately set forth in this paragraph.

9. Paragraph 9 is not true. Defendant affirmatively states as between this plaintiff and this defendant this matter is moot. Moreover, in response to sub-paragraphs (A) and (B) the characterization of the policy and training of the Department of State Police is inaccurate and this defendant is not in any event responsible for establishing policy or training.

WHEREFORE defendant requests that this Court dismiss plaintiff's claim in its entirety and order any other relief that it deems equitable and just.

SPECIAL AND AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a cause of action.

2. Defendant is entitled to qualified immunity with respect to any allegations of violations of either federal or state constitutional rights.

3. Any damage, injury or loss suffered by plaintiff's decedent or heirs was caused in whole or in part by plaintiff's decedent's intentional, willful, grossly negligent and/or negligent acts including but, not limited to, the following acts or omissions.

A. Participating in an armed robbery, fleeing and eluding police and placing police in fear of deadly peril by loading, displaying and using an assault rifle in a manner

that reasonably caused defendant and other officers to believe that their lives and the lives of others were in peril.

B. Announcing an intent to forcibly resist arrest with the use of a firearm.

C. Acting in concert with another individual in the above referenced acts or omissions and/or failing to prevent or discourage the other individual from doing the referenced acts or omissions.

D. Being intoxicated on alcohol and/or drugs while participating in the above describe acts or omissions.

4. Any action taken by defendant LaBelle with respect to plaintiff's decedent was justified and reasonable as defense of self and others and/or reasonable force to effect an arrest and/or present the escape of an armed and dangerous felon.

5. Plaintiff's claims are moot.

-4-

6. Another action has been initiated between the same or related parties involving the same incident and plaintiff's claims are barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel. –

7. This case is frivolous and without arguable merit entitling defendant to costs and attorney fees pursuant to 42 U.S.C. § 1988 and/or Rule 11 sanctions.

8. Defendant reserves the right to allege further affirmative defenses disclosed as a result of further discovery in this case.

WHEREFORE defendant requests that this Court dismiss plaintiff's claim in its entirety and order any other relief that it deems equitable and just.

Date: July 30, 1998

Respectfully submitted,
FRANK J. KELLEY
Attorney General

(s)Mark V. Schoen (P23576)
Assistant Attorney General
Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
Telephone: (517) 373-6096

Appendix H

APPENDIX H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE ANN MARTIN, and
WILLIAM HAROLD MARTIN,
Plaintiffs,

V.

JOSEPH L. LABELLE, CHARLES E. BUSH
and JOHN P. PARKER,
Defendants.

Case No.98-40197
Hon. Paul V. Gadola

Robert J. Lord (P16797)
Attorney for Plaintiff

Mark V. Schoen (P23576)
Attorney for Defendants
Michigan Department of Attorney General
Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
(517) 373-6096

ANSWER TO COMPLAINT
AS TO DEFENDANT JOSEPH L. LABELLE, ONLY

Defendant Joseph L. LaBelle, by his undersigned attorneys, says as follows for his answer to plaintiffs' complaint.

Defendant LaBelle incorporates by reference the answer and affirmative defenses to plaintiffs' complaint previously filed on behalf of defendants Bush and Parker as if set forth word for word and paragraph for paragraph here.

Appendix H

COUNT ONE

1. Defendants have no personal knowledge as to the plaintiffs' relationship to the decedent referenced in the death certificate attached to plaintiffs' complaint.

2. Defendants need not respond to the legal conclusions contained in this paragraph. If any response is required, defendants deny that the statement of law contained in this paragraph is accurate or material to these defendants.

3. Defendants, without waiving any objection to hearsay or materiality, admit that Joseph LaBelle is the person referenced in the various sections of the police report appended to plaintiffs' complaint with respect to suballegations (1) - (4).

As to subparagraph (5), without waiving any objection to hearsay or materiality, defendants admit Joseph LaBelle was one of four officers found to have been justified in their use of force by the Saginaw County Prosecutor, as reflected in the referenced article.

As to subparagraph (6), without waiving any objection to hearsay or materiality, defendants admit Joseph LaBelle was one of four officers found to have been justified in their use of force by the Saginaw County Prosecutor, as reflected in the referenced article.

4. Defendant, without waiving any objection to materiality or hearsay, admits he is the person identified in the referenced newspaper articles.

5. Defendant, without waiving any objection to materiality or hearsay, admits he is the person identified in the referenced newspaper articles.

6. Defendants admit Joseph LaBelle has been a State Trooper for a number of years. Defendants admit that Joseph LaBelle has been trained in the use of firearms including the Sig-Sauer .9 mm pistol. Defendants deny that Joseph

-2-

LaBelle was trained in the "intentional, reckless, maliciously extreme, and maliciously outrageous" use of the firearm. Defendant admits he fired shots at decedent on the date alleged. Defendant did not know on the date of the incident that the decedent was killed instantly and does not have that knowledge to the present.

7. Defendants admit Joseph LaBelle was present and justifi-

ably fired shots at the decedent on the date and at the location alleged.

(1) It is denied that Joseph LaBelle unreasonably seized decedent or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violation any duty owed to decedent or plaintiffs.

(2) It is denied that defendant unreasonably seized decedent or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs. The balance of the allegations in this subparagraph are denied as untrue.

(3) Defendant has no knowledge of plaintiff's damages, if any, and leaves plaintiff to his proofs. Defendant denies plaintiff, as a matter of fact or law, is entitled to any damages.

8. Defendants have no knowledge of the date of decedent's funeral. It is admitted that, on or about the date alleged, Lt. Bush arranged to meet with decedent's family to discuss aspects of the incident.

9. It is admitted that, on or near the date alleged, defendants Bush and Parker met with decedent's family to discuss aspects of the incident. Defendants

-3-

deny that this discussion is accurately set forth in this paragraph and deny intending to cause any injury or damage to plaintiffs. Defendants have no knowledge as to plaintiff's medical condition or damages, if any.

COUNT TWO

1. Defendants have no personal knowledge as to the plaintiffs' relationship to the decedent.

2. Defendants incorporate by reference their answer to the paragraph referenced.

3. Defendants incorporate by reference their answer to the paragraph referenced.

4. Defendants incorporate by reference their answer to the

paragraph referenced.

5. Defendants incorporate by reference their answer to the paragraph referenced.

6. Defendants incorporate by reference their answer to the paragraph referenced.

7. Defendants admit Joseph LaBelle was present and justifiably fired shots at the decedent on the date and at the location alleged.

(1) It is denied that Joseph LaBelle unreasonably seized decedent or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs.

(2) It is denied that defendant unreasonably seized decedent

-4-

or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs. The balance of the allegations in this subparagraph are denied as untrue.

(3) Defendant has no knowledge of plaintiff's damages, if any, and leaves plaintiff to his proofs. Defendant denies plaintiff, as a matter of fact or law, is entitled to any damages.

8. Defendants have no knowledge of the date of decedent's funeral. It is admitted that on or about the date alleged Lt. Bush arranged to meet with decedent's family to discuss aspects of the incident.

9. It is admitted that on or near the date alleged defendants Bush and Parker met with decedent's family to discuss aspects of the incident. Defendants deny that this discussion is accurately set forth in this paragraph and deny intending to cause any injury or damage to plaintiffs. Defendants have no knowledge as to plaintiffs' medical condition or damages, if any.

WHEREFORE defendants request that this Court dismiss plaintiffs' claim in its entirety and order any other relief that it deems equitable and just.

Appendix H

SPECIAL AND AFFIRMATIVE DEFENSES

1. Defendants are entitled to public employee immunity. MCL 691.1407(2).

2. Defendant is entitled to qualified immunity with respect to any allegations of violations of either federal or state constitutional rights.

3. Any damage, injury or loss suffered by plaintiffs' decedent or heirs was caused in whole or in part by plaintiffs' decedent's intentional, willful, grossly

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negligent and/or negligent acts including, but not limited to, the following acts or omissions:

A. Participating in an armed robbery, fleeing and eluding police and placing police in fear of deadly peril by loading, displaying and using an assault rifle in a manner that reasonably caused defendant and other officers to believe that their lives and the lives of others were in peril;

B. Announcing an intent to forcibly resist arrest with the use of a firearm;

C. Acting in concert with another individual in the above referenced acts or omissions and/or failing to prevent or discourage the other individual from doing the referenced acts or omissions;

D. Being intoxicated on alcohol and/or drugs while participating in the above described acts or omissions.

4. Any action taken by defendant LaBelle with respect to plaintiffs' decedent was justified and reasonable as defense or self and others and/or reasonable force to effect an arrest and/of prevent the escape of an armed and dangerous felon.

5. Defendants reserve all rights with regard to apportionment of fault and collateral source set offs as well as any other right pursuant to the statutes commonly referred to as tort reform.

6. Plaintiffs' complaint fails to state a cause of action.

7. Plaintiffs' claims may be barred in whole or in part by the statute of limitations.

8. Another action has been initiated between the same or related parties involving the same incident and plaintiffs' claims are barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

9. This case is frivolous and without arguable merit entitling defendants

to costs and attorney fees pursuant to 42 U.S.C. § 1988 and/or Rule 11 sanctions.

10. Defendants reserve the right to allege further affirmative defenses disclosed as a result of further discovery in the case.

WHEREFORE defendants request that this Court dismiss plaintiffs' claim in its entirety and order any other relief that it deems equitable and just.

Dated: June 29, 1998

Respectfully submitted,

FRANK J. KELLEY
Attorney General

(s) Mark V. Schoen (P23576)
Assistant Attorney General
Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
Telephone: (517) 373-6096

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE ANN MARTIN and
WILLIAM HAROLD MARTIN
Plaintiffs,

V.

JOSEPH L. LABELLE, CHARLES E. BUSH and
JOHN P. PARKER,
Defendants.

Case No.98-40197
Hon. Paul V. Gadola

Robert J. Lord (P16797)
Attorney for Plaintiff

Mark V. Schoen (P23576)
Attorney for Defendants
Michigan Department of Attorney General
Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
(517) 373-6096

ANSWER TO COMPLAINT
AS TO DEFENDANTS CHARLES BUSH
AND JOHN PARKER, ONLY

Defendants Charles Bush and John Parker their undersigned attorneys say for their answer to plaintiffs' complaint as follows:

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COUNT ONE

1. Defendants have no personal knowledge as to the plaintiffs' relationship to the decedent referenced in the death

certificate attached to plaintiffs' complaint.

2. Defendants need not respond to the legal conclusions contained in this paragraph. If any response is required, defendants deny that the statement of law contained in this paragraph is accurate or material to these defendants.

3. Defendants, without waiving any objection to hearsay or materiality, admit that Joseph LaBelle is the person referenced in the various sections of the police report appended to plaintiffs' complaint with respect to suballegations (1) - (4).

As to subparagraph (5), without waiving any objection to hearsay or materiality, defendants admit Joseph LaBelle was one of four officers found to have been justified in their use of force by the Saginaw County Prosecutor, as reflected in the referenced article.

As to subparagraph (6), without waiving any objection to hearsay or materiality, defendants admit Joseph LaBelle was one of four officers found to have been justified in their use of force by the Saginaw County Prosecutor, as reflected in the referenced article.

4. Defendant, without waiving any objection to materiality or hearsay, admits he is the person identified in the referenced newspaper articles.

5. Defendant, without waiving any objection to materiality or hearsay, admits he is the person identified in the referenced newspaper articles.

6. Defendants admit Joseph LaBelle as been a State Trooper for a number of years. Defendants admit that Joseph LaBelle has been trained in the use of firearms including the Sig-Sauer .9 mm pistol. Defendants deny that Joseph

Labelle was trained in the "intentional, reckless, maliciously extreme, and maliciously outrageous" use of the firearm. Defendant admits he fired shots at decedent on the date alleged.

Defendant did not know on the date of the incident that the decedent was killed instantly and does not have that knowledge to the present.

7. Defendants admit Joseph LaBelle was present and justifiably fired shots at the decedent on the date and at the location alleged.

(1) It is denied that Joseph LaBelle unreasonably seized decedent or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs.

(2) It is denied that defendant unreasonably seized decedent or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs. The balance of the allegations in this subparagraph are denied as untrue.

(3) Defendant has no knowledge of plaintiff's damages, if any, and leaves plaintiff to his proofs. Defendant denies plaintiff, as a matter of fact or law, is entitled to any damages.

8. Defendants have no knowledge of the date of decedent's funeral. It is admitted that, on or about the date alleged, Lt. Bush arranged to meet with decedent's family to discuss aspects of the incident.

9. It is admitted that, on or near the date alleged, defendants Bush and Parker met with decedent's family to discuss aspects of the incident. Defendants

deny that this discussion is accurately set forth in this paragraph and deny intending to cause any injury or damage to plaintiffs. Defendants have no knowledge as to plaintiffs' medical condition or damages, if any.

COUNT TWO

1. Defendants have no personal knowledge as to the plaintiffs' relationship to the decedent.

2. Defendants incorporate by reference their answer to the paragraph referenced.

3. Defendants incorporate by reference their answer to the paragraph referenced.

4. Defendants incorporate by reference their answer to the paragraph referenced.

5. Defendants incorporate by reference their answer to the paragraph referenced.

6. Defendants incorporate by reference their answer to the paragraph referenced.

7. Defendants admit Joseph LaBelle was present and justifiably fired shots at the decedent on the date and at the location alleged.

(1) It is denied that Joseph LaBelle unreasonably seized decedent or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs.

(2) It is denied that defendant unreasonably seized decedent

or that defendant's actions in shooting at decedent were in any way improper or unjustified.

Defendant denies violating any of decedent's rights or violating any duty owed to decedent or plaintiffs. The balance of the allegations in this subparagraph are denied as untrue.

(3) Defendant has no knowledge of plaintiff's damages, if any, and leaves plaintiff to his proofs. Defendant denies plaintiff, as a matter of fact or law, is entitled to any damages.

8. Defendants have no knowledge of the date of decedent's funeral. It is admitted that on or about the date alleged Lt. Bush arranged to meet with decedent's family to discuss aspects of the incident.

9. It is admitted that on or near the date alleged defendants

Bush and Parker met with decedent's family to discuss aspects of the incident. Defendants deny that this discussion is accurately set forth in this paragraph and deny intending to cause any injury or damage to plaintiffs. Defendants have no knowledge as to plaintiffs' medical condition or damages, if any.

WHEREFORE defendants request that this Court dismiss plaintiffs' claim in its entirety and order any other relief that it deems equitable and just.

SPECIAL AND AFFIRMATIVE DEFENSES

1. Defendants are entitled to public employee immunity. MCL 691.1407(2).

2. Defendant is entitled to qualified immunity with respect to any allegations of violations of either federal or state constitutional rights.

3. Any damage, injury or loss suffered by plaintiffs' decedent or heirs was caused in whole or in part by plaintiffs' decedent's intentional, willful, grossly

negligent and/or negligent acts including, but not limited to, the following acts or omissions:

A. Participating in an armed robbery, fleeing and eluding police and placing police in fear of deadly peril by loading, displaying and using an assault rifle in a manner that reasonably caused defendant and other officers to believe that their lives and the lives of others were in peril;

B. Announcing an intent to forcibly resist arrest with the use of a firearm;

C. Acting in concert with another individual in the above referenced acts or omissions and/or failing to prevent or discourage the other individual from doing the referenced acts or omissions;

D. Being intoxicated on alcohol and/or drugs while participating in the above described acts of omissions.

4. Any action taken by defendant LaBelle with respect to plaintiffs' decedent was justified an reasonable as defense or self

and others and/or reasonable force to effect and arrest and/or prevent the escape of an armed and dangerous felon.

5. Defendants reserve all rights with regard to apportionment of fault and collateral source set offs as well as any other right pursuant to the statutes commonly referred to as tort reform.

6. Plaintiffs' complaint fails to state a cause of action.

7. Plaintiffs' claims may be barred in whole or in part by the statute of limitations.

8. Another action has been initiated between the same or related parties involving the same incident and plaintiffs' claims are barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

9. This case is frivolous and without arguable merit entitling defendants

-6-

to costs and attorney fees pursuant to 42 U.S.C. § 1988 and/or Rule 11 sanctions.

10. Defendants reserve the right to allege further affirmative defenses disclosed as a result of further discovery in the case.

WHEREFORE defendants request that this Court dismiss plaintiffs' claim in its entirety and order any other relief that it deems equitable and just.

DEFENDANT'S RELIANCE ON PLAINTIFFS' JURY DEMAND

Defendant, by his undersigned counsel, hereby relies on the jury demand filed by plaintiff.

Dated: July 10,, 1998

Respectfully submitted,
FRANK J. KELLEY
Attorney General

(s) Mark V. Schoen (P23576)
Assistant Attorney General
Tort Defense Division
P.O. Box 30217
Lansing, Michigan 48909
Telephone: (517) 373-6096

APPENDIX J

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 532

POTTER STEWART U.S. COURTHOUSE

CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

ROY G. FORD
(513) 564-7016

David J. Weaver
Eastern District of Michigan at Bay City
1000 Washington Avenue
Suite 219 Federal Building
Bay City, MI 48708

Filed: May 16, 2001

Robert J. Lord
8388 Dixie Highway
Fair Haven, MI 48023

Mark V. Schoen
Office of the Attorney General
120 N. Washington Square
P.O. Box 30217
Lansing, MI 48909

RE: 00-1157 Martin vs. LaBelle
District Court No. 98-10194
98-10228
98-10229

The mandate issued in the above-styled case.

Very truly yours,
Leonard Green, Clerk

Roy G. Ford
Briefs Deputy

cc: Honorable Victoria A. Roberts

APPENDIX J

UNITED STATE COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No: 00-1157

Filed: May 16, 2001

CONSTANCE ANN MARTIN, Personal
Representative of the Estate of
Kirk William Martin, Deceased;
WILLIAM HAROLD MARTIN

Plaintiffs - Appellants

v.

JOSEPH L. LABELLE; CHARLES E. BUSH
JOHN P. PARKER

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 3/27/01 the mandate for this case hereby issues today.

COSTS: **NONE**
Filing Fee ..... $
Printing ..... $
Total ..... $

A True Copy
Attest: (s) Roy Tod
Deputy Clerk